



Missouri
Division
of

DWD Issuance 10-2018

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Continuous, until further
notice

SUBJECT:

Local Workforce Development Board Membership Requirements and Recertification Procedures under the Workforce Innovation and Opportunity Act

- ATTACHMENTS:** (1)—Checklist of Documents for Certification or Recertification.
 (2)—Local Workforce Development Board (WDB) Membership Certification or Recertification Form.
 (3)—Matrix Example of the Workforce Innovation and Opportunity Act (WIOA) Membership Requirements.
 (4)—Citations for minimum Local WDB requirements from 20 CFR Part 679.

This Issuance is Official Policy of the Missouri Division of Workforce Development

ISSUING AUTHORITY:

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Development

THIS ISSUANCE DOES NOT REQUIRE CREATION OR ALTERATION OF A CORRESPONDING LOCAL POLICY

KEYWORDS:

Local WDB Recertification; Local WDBs; Membership; WIOA.

THIS ISSUANCE AFFECTS:

WIOA Title I Local Areas/Local Boards/Local Plans
WIOA Fiscal/Administrative Procedures
State of Missouri Workforce System Procedures

FOR THE ATTENTION OF:

Chief Elected Officials
Local WDB Chairpersons
Local WDB Directors
Local WDB Members

RESCISSIONS:

DWD Issuance 12-2016, Change 1, “Local Workforce Development Board Membership Requirements and Certification/Recertification Procedures under the Workforce Innovation and Opportunity Act, Change 1,” February 24, 2017.

REFERENCES:

- Workforce Innovation and Opportunity Act Section 107 [[29 U.S.C. 3122](#)].
- [20 CFR Part 679, Subpart C](#)—Local Workforce Development Boards.

SUMMARY:

This Issuance revises previous guidance on certification documentation for incumbent Local WDB members and future appointees to such Local WDBs. It includes the State’s statutorily required¹ criteria for Chief Elected Officials (CEO) to use when appointing members to the Local WDB. This Issuance updates and reiterates previous guidance² on Local WDB recertification requirements. It incorporates the federal regulations³ regarding Local WDB composition under WIOA.⁴ It

¹ WIOA sec. 107(b)(1) [[29 U.S.C. 3122\(b\)\(1\)](#)].

² DWD Issuance 12-2016, Change 1, “Local Workforce Development Board Membership Requirements and Certification/Recertification Procedures under the Workforce Innovation and Opportunity Act, Change 1,” February 24, 2017 [*herein rescinded*].

³ [20 CFR part 679, Subpart C](#)—Local Workforce Development Boards.

⁴ Pub. L. 113-128 [[29 U.S.C. 3101 et seq.](#)].

restates the statutory two-year deadline for Local WDBs to obtain recertification that they are properly constituted as required by WIOA⁵. Local WDBs must present their documentation to the State for recertification on or before June 14, 2019.

BACKGROUND:

WIOA specifies that the Governor, in partnership with the Missouri Workforce Development Board (MoWDB), establish criteria for use by CEOs for appointment of members to their Local WDBs.⁶ The law specifies minimum requirements for these criteria.⁷ This Issuance, as one part, fulfills that requirement.

WIOA also requires that the Governor recertify⁸ each Local WDB every two years.⁹ As the second part, this Issuance addresses that requirement. This renewal cycle coincides with the anniversary of the July 1, 2015, implementation date for WIOA. Local WDBs must document that their membership requirements meet WIOA Section 107 membership criteria to the Division of Workforce Development (DWD) no later than close-of-business June 14, 2019, to avoid non-compliance with WIOA. (DWD reserves the period from June 14 to June 28, 2019, for administrative purposes, to evaluate the submitted documentation.)

SUBSTANCE:

Required Board Members

WIOA requires the CEO for the LWDA to solicit nominations from the appropriate organizations for eight categories of appointed ~~business~~ Local WDB:

2. Labor/Workforce;
3. Adult Education and Literacy (AEL);
4. Higher Education;
5. Economic Development;
6. Wagner-Peyser Act (DWD);
7. Rehabilitation Act (Vocational Rehabilitation (VR)); and
8. Temporary Assistance to Needy Families (TANF) (Family Support Division (FSD)).

Qualified individuals are to be appointed to the board based on those nominations. This responsibility is a statutory administrative function and is not shareable or delegable—the CEO must perform it. Certain of these nominations for board positions, detailed below, must come from State agencies. Other appointments to the board that are at the CEO’s discretion to make—or not to make—are detailed below.

Nominations must come from business, labor/workforce, education, training, or other organizations appropriate to the position being filled. The records of all nominations for board memberships received by the CEO, and acceptances of appointments by the CEO’s designates, should be forwarded to the Local WDB custodian of records¹⁰ to comply with WIOA¹¹ and State¹² Sunshine requirements.

WIOA states that a Local WDB **must include** the following members (*See also Attachments 3 and 4*):

⁵ WIOA sec. 107(c)(2) [[29 U.S.C. 3122\(c\)\(2\)](#)].

⁶ WIOA sec. 107(b)(1) [[29 U.S.C. 3122\(b\)\(1\)](#)].

⁷ WIOA sec. 107(b)(2) [[29 U.S.C. 3122\(b\)\(2\)](#)].

⁸ The requirements herein would apply equally to the certification process for a new Local WDB, but because all currently existing Missouri Local WDBs have been certified previously, this Issuance simply refers to “recertification.”

⁹ WIOA sec. 107(c)(2) [[29 U.S.C. 3122\(c\)\(2\)](#)].

¹⁰ [DWD Issuance 19-2016](#), “Ethical Requirements for Chief Elected Officials and Local Workforce Development Boards,” June 7, 2017 and [DWD Issuance 27-2017](#), “Public Communications and Official Requests for Information,” June 4, 2018.

¹¹ WIOA sec. 107(e) [[29 U.S.C. 3122\(e\)](#)].

¹² [RSMo Chapter 610.023](#).

Local WDB Business Membership Requirements

- A majority of the members of each Local WDB shall be representatives of business in the local area who:
 - Are full-time¹³ owners of businesses, chief executives or operating officers of businesses, or other business executives or employers with optimum policy-making or hiring authority. (The term “optimum policy-making authority” means an individual who can reasonably be expected to speak affirmatively on behalf of the entity he or she represents and to commit that entity to a chosen course of action.);¹⁴ and
 - Represent businesses, including small business or organizations representing businesses described in this clause that provide employment opportunities that, at a minimum, include high-quality, work-relevant training and development in in-demand industry sectors or occupations in the local area;¹⁵ and
 - Represent employment opportunities in high-growth, in-demand industry sectors within each Local Workforce Development Area (LWDA) that are willing to engage in collaborative implementation of the sector-strategy implementation plan developed by the Missouri industry/sector partnership;¹⁶ and
 - Must be appointed from among individuals nominated by local business organizations and business trade associations.¹⁷
- At a minimum, two members of the business majority must represent “small business,” as defined by the U.S. Small Business Administration.¹⁸
- Business representatives serving on Local WDBs also may serve on the State WDB. Each business representative must meet all other criteria cited herein for optimum authority and in-demand industry sectors.¹⁹

DWD statewide policy for applying the above rules for Local WDB business membership:

- A “majority” is equal to 51 percent or more.
- For a business (private sector) representative, an individual with “optimum policy-making authority” is the business owner, operating president or vice president, human resources officer, or other employee of the business that has verifiable authority to commit that business entity to a chosen course of action, as noted in the rules.²⁰ Therefore, mid-level managers and supervisors, purchasing agents, and general employees are not eligible to represent their employers by serving on a Local WDB. Likewise, retirees or employee representatives to local business organizations or business trade associations do not qualify.
- The business must be an active domestic or out-of-state business entity registered with the Secretary of State’s Office to conduct business in Missouri, and is in good standing with the State. This includes for-profit and nonprofit corporations, specialized business entities such as professional corporations, close corporations, agricultural cooperatives and mutual associations, limited liability companies, limited partnerships, and others.
- In addition, the business must have a minimum of three full-time employees, not including the person nominated.
- DWD may take appropriate and necessary action, including discussing with nominating organizations, to verify that a business representative nominee in fact has optimum policy-making or hiring authority within that business. (Some nominating organizations may be unaware of the qualifications for Local WDB membership that an individual must possess to be eligible for nomination.)
- The Local WDB member must provide the Federal Employer Identification Number (FEIN) of the business being represented by the nominee on the Local WDB Membership Certification or Recertification Form. (*See Attachments 1 and 2*).

Local WDB Labor/Workforce Representatives

¹³ See also the discussion of retirees’ voting rights on page 5.

¹⁴ [20 CFR 679.340\(a\)](#).

¹⁵ WIOA sec. 107(b)(2)(A)(i) and (ii). [[29 U.S.C. 3122\(b\)\(2\)\(A\)\(i\) and \(ii\)](#)].

¹⁶ WIOA sec. 3(26) [[29 U.S.C. 3102\(26\)](#)].

¹⁷ WIOA sec. 107(b)(2)(A)(iii) [[29 U.S.C. 3122\(b\)\(2\)\(A\)\(iii\)](#)].

¹⁸ <https://www.sba.gov/contracting/getting-started-contractor/make-sure-you-meet-sba-size-standards/table-small-business-size-standards>.

¹⁹ [20 CFR 679.320\(a\) and \(b\)](#).

²⁰ [20 CFR 679.340\(a\)](#).

WIOA requires²¹ that not less than 20 percent of the members of each Local WDB shall be representatives of labor/workforce within the LWDA:

- This must include representatives of labor organizations (if in the LWDA there are employees represented by labor organizations) who have been nominated by local labor federations. For a LWDA in which no employees are represented by labor organizations, then other representatives of employees may be nominated.
- The 20 percent also must include a representative who is a member of a labor organization—or a training director—from a joint labor-management apprenticeship program. If no such joint program exists in the LWDA, then a representative of another apprenticeship program in the LWDA may be nominated, if such a program exists.
- Additionally, the labor/workforce delegation on the Local WDB may include representatives of community-based organizations that have demonstrated experience and expertise in addressing the employment needs of individuals with barriers to employment. This can include organizations that serve veterans or that provide or support competitive, integrated employment for individuals with disabilities. It may also include representatives of organizations that have demonstrated experience and expertise in addressing the employment, training, or education needs of eligible youth, including representatives of organizations that serve out-of-school youth.

To attain this 20 percent membership labor/workforce proportion, while still meeting the remaining minimum membership requirements, a Local WDB must have a **minimum of five (5) members in the workforce category** (*Attachment 3*).

Local WDB AEL

WIOA requires a minimum of one representative of providers of AEL activities funded by WIOA Title II. As a core partner under WIOA, the Department of Elementary and Secondary Education's (DESE) Division of Learning Services, Office of Adult Learning and Rehabilitation Services, nominates the AEL representative, in consultation with the Local WDB, prior to submitting the name in nomination to the CEO.

Local WDB Higher Education Representatives

WIOA requires a minimum of one representative on the Local WDB from a public institution of higher education providing workforce investment activities. These entities (typically, community colleges and public two-year or four-year institutions that provide training services) may present nominations for Local WDB education and training representative appointments directly to the CEO.

Local WDB Economic/Community Development

WIOA requires a minimum of one representative on the Local WDB from a LWDA economic and community development entity.

Local WDB State Agency Representatives

DWD policy for representatives of State agencies as Local WDB members is:

- For a local agency of State government, an individual with optimum policy-making authority is the person representing the agency that has been delegated by the State-level agency to possess optimal policy-making authority relevant to WIOA. Optimum policy-making authority in this capacity can exist only by delegation from the State-level agency.
- Evidence such as a letter, email, or other type of written record showing that an individual representing a local agency of State government has been delegated optimum policy-making authority by the State-government agency²² must be available for the purpose of program-compliance audit, monitoring, or upon request by DWD.

Local WDB Wagner-Peyser Act Representatives (DWD)

The Local WDB must include a minimum of one representative of the Wagner-Peyser program serving the LWDA. As a core partner under WIOA, DWD shall nominate the appropriate representative, in consultation with the Local WDB prior to submitting the name in nomination to the CEO.

²¹ WIOA sec. 107(b)(2)(B) [[29 U.S.C. 3122\(b\)\(2\)\(B\)](#)].

²² [20 CFR 679.320\(f\)](#).

Local WDB Rehabilitation Act Representatives (Vocational Rehabilitation)

The Local WDB must include a minimum of one representative of the programs carried out under Title I of the Rehabilitation Act of 1973²³ serving the LWDA (excepting the client assistance program or American Indian Vocational Rehabilitation Services). As a core partner under WIOA, DESE's Division of Vocational Rehabilitation (DVR) shall nominate this representative, in consultation with the Local WDB, prior to submitting the name in nomination to the CEO.

Local WDB Temporary Assistance for Needy Families (TANF) Representative (FSD)

The Governor and MoWDB have established the status of Title IV of the Social Security Act (TANF)²⁴ as a core program of the Missouri workforce development system and thereby a required member of each Local WDB. The Local WDB must include a representative of the TANF program serving the LWDA. As a core partner under WIOA, The Department of Social Services (DSS), FSD, shall nominate this representative, in consultation with the Local WDB, prior to submitting the name in nomination to the CEO.

All required members of the Local WDB have voting privileges,²⁵ excepting for any votes where they must recuse themselves to conform to conflict of interest or other ethics laws or regulations.

Elective Board Appointments

In addition to the *required* Local WDB representation, the CEO has the discretion to add other representatives to the Local WDB membership, as stated in WIOA and the Final Rules.²⁶ However, any expansion in Local WDB size must not reduce the required minimums of a 51 percent business majority and 20 percent labor/workforce representation. Other possible elective Local WDB members suggested by WIOA may include:

- Representatives of community-based organizations with demonstrated experience and expertise in addressing the employment needs of individuals with barriers to employment, including organizations that serve veterans or that provide or support competitive, integrated employment for individuals with disabilities;
- Representatives of organizations that have demonstrated experience and expertise in addressing the employment, training, or education needs of eligible youth, including representatives of organizations that serve out-of-school youth;
- Representatives of local educational agencies with demonstrated experience and expertise in addressing the education or training needs of individuals with barriers to employment;
- Representatives of agencies or entities administering programs serving the LWDA relating to transportation, housing, and public assistance; or
- Representatives of philanthropic organizations serving the LWDA.

The voting privileges, if any, of an elective Local WDB appointee (non-required member) are determined and must be conveyed to that appointee by the CEO,²⁷ except where law, regulation, or State policy (*below*) require that the appointee must recuse or have an *ex officio*, non-voting status.

Additional State Requirements and Determinations

In addition, the state of Missouri has the following policy requirements for all Local WDB members:

- It is State policy that all categories of Local WDB membership (except *ex officio* non-voting appointees) must be appointed based upon letters of nomination to the CEO. The required sources of the business, labor/workforce, higher education, and State-level agency nominations are as described above. The nomination letter of a potential member should be sent or forwarded to the appropriate CEO for consideration. If the CEO determines to appoint,

²³ [29 U.S.C. 701 et seq.](#)

²⁴ [42 U.S.C. 601 et seq.](#)

²⁵ [20 CFR 679.320\(i\).](#)

²⁶ WIOA sec. 107(b)(2)(E) [[29 U.S.C. 3122\(b\)\(2\)\(E\)](#)] and [20 CFR 679.320\(e\)\(4\)](#).

²⁷ [20 CFR 679.320\(i\).](#)

based on the nomination, a letter stating support is submitted to the DWD Director, who reviews the nomination and certifies it on behalf of the Governor, as required by WIOA.²⁸ 107(a) and 107(c)(2).

- **Local WDB Ex Officio Members** (*nomination letters not required*)
 - *Retired Individuals*: An individual known to be retired, by their affirmation, is only eligible for appointment by the CEO to the Local WDB as an ex officio, *non-voting* member.
 - *Part-time employees/businesses*: An individual that is a part-time employee of a business is only eligible for appointment by the CEO to the Local WDB as an ex officio, *non-voting* member.
 - Ex officio members do not count toward calculating the required 51 percent minimum business membership or the 20 percent minimum workforce membership proportions of the Local WDB.
- *Transitioning Board Members*. For the duration of a term, a voting Local WDB member must maintain the WIOA qualification justifying that appointment at the time it was certified. The CEO must replace a full-time-employed, voting, Local WDB member who *transitions* into retirement or part-time employment, or who changes their primary employer of record. The member cannot vote or complete the term. The CEO may reappoint that person as an ex officio, non-voting member, but the voting seat must be filled immediately by a qualified replacement.
- The WIOA rules²⁹ allow dual representation, also known as “double hatting.” The CEO may appoint an individual to represent more than one entity if that individual meets *all* the qualification criteria for representation in *both* categories.
- For compliance with the multiple representation rules, a private business representative may concurrently represent economic development, if nominated by a 501(c)(3) not-for-profit organization and attested as representing an economic-development interest. However, all instances of “double hatting” are subject to any “applicable ethical rules,”³⁰ regulations, statutes, or laws governing conflict of interest, and should be avoided if such a conflict exists or appears to exist.
- A local Chamber of Commerce director or staff member may be a Local WDB member.
- Compliance with WIOA Local WDB membership criteria, including the policies herein stated, is subject to review by DWD. Evidence of a Local WDB member’s eligibility may be requested by DWD at any time to ensure adherence to the legislative intent of WIOA to have an appropriate mix of representation and experience on Local WDBs.
- The Governor, in partnership with MoWDB, when recertifying Local WDB membership, may apply considerations of sector appropriateness, significant number of employees or firm size, or appropriateness to the membership category, on a case-by-case basis, when reviewing appointments.

Local WDB New Member and Board Membership Recertification Procedures

Individual Local WDB member certification and Local WDB Recertification derives from criteria established in WIOA³¹ and its implementing regulations³² for Local Board membership (*included as Attachment 4*). The Local WDB Membership Recertification Form (*Attachment 2*) must be used for the two following purposes:

- To file notice with the State of an addition or change to the Local WDB membership; or
- For recertification of the entire Local WDB, which is required every two (2) years.

The form must be completed, signed, and dated by the CEO, or the CEO Consortium Chair, whichever is applicable. Copies of nomination letters are required for members not previously certified and must conform to the required sources of nominations as described under the membership requirements above, where applicable.

Any incumbent Local WDB member previously attested to as meeting WIOA compliant categories should be identified on Attachment 2 by the industry or government sector that incumbent represents.

²⁸ WIOA sec. 107(a) [[29 U.S.C. 3122\(a\)](#)] and WIOA sec. 107(c)(2) [[29 U.S.C. 3122\(c\)\(2\)](#)].

²⁹ [20 CFR 679.320\(h\)](#).

³⁰ DOL preamble commentary on dual representation rule 20 CFR 679.320(h), [81 FR 56100](#), August 19, 2016.

³¹ WIOA sec. 107(b) [[29 U.S.C. 3122\(b\)](#)].

³² [20 CFR 679.320](#).

ROLES, RESPONSIBILITIES, and REQUIRED ACTIONS:

Each LWDA CEO must ensure that the Local WDB membership requirements are followed when accepting nominations for Local WDB membership and when submitting the accounting of the whole Local WDB's membership qualifications for recertification to the State either directly or through the Local WDB.

TIMELINE:

CEO (with assistance of Local WDB staff) — Submission of biennial recertification form.**June 14, 2019**

INQUIRIES:

Please direct all questions or comments regarding this Issuance document to owdlocalplan@dhewd.mo.gov. All active DWD Issuances are available at jobs.mo.gov/dwdissuances. Expired/rescinded Issuances are available on request.

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